

REMARKS

Claims 24-41 are pending in the application after this amendment. In the following sections of the Amendment the rejections set forth by the Examiner in the December 10, 2007 final Office action are addressed. These rejections are respectfully traversed.

Incorporated herein (without repetition) are the specific recitation of the facts and the specific arguments found in previous papers.

Applicant has cancelled claims 1-23, amended claims 24 and 25, and added claims 26-41. Applicant has made these amendments for the purpose of furthering prosecution, but reserves the right to file continuation applications. Based on these amendments, applicant respectfully submits that the currently pending claims are now in condition for allowance.

In the December 10, 2007 final Office action, the Examiner rejected claims 1-23 under 35 USC §102(b) as being anticipated by U.S. Patent No. 5,569,242 to Lax et al. (the "Lax reference"). These claims have been cancelled. Accordingly, this rejection is now moot.

The Examiner rejected claims 1,2, 4-13, 16, 17, 20, 21, 24, and 25 under 35 USC §102(b) as being anticipated by U.S. Patent No. 6,929,640 to Underwood et al. (the "Underwood reference"). Significantly, the Examiner did not reject claims in which it is specified that the "tissue protecting region has a domed center." These claims include claims 3, 14, 18, and 22. Applicant has reviewed the Underwood reference and believes that the disclosed device does not teach or suggest this element, nor could it be modified to include this element without impermissibly rendering the Underwood device unsatisfactory for its intended purpose (MPEP 2143.01) and/or impermissibly changing the principle of operation of the Underwood device (MPEP 2143.01).

Applicant has amended claims 24 and 25 to specifically recite that the tissue protecting region has a domed center. The dome shape was clearly shown and described in the original parent application. For example, at page 12, lines 20-25 of the parent patent application specifically sets forth the following description: "The head is

preferably thinner at its smooth rounded edges 210 than at its exemplary domed center 220, allowing easy insertion between tissue layers and separation of tissues as the instrument is advanced to the injury site or moved from side to side. The shape facilitates treating adjacent discs by manipulating the disc refurbisher in the epidural space." (Emphasis added.) Another example is at page 13, lines 1-3 of the parent patent application specifically sets forth the following description: "The smooth, rounded edges 210 of the anterior portion of the exemplary head are relatively thin and slope to a relatively thick region under the exemplary domed center 220 creating a wedge-shaped head geometry." (Emphasis added.) No new matter has been added.

Applicant has added new independent claim 36 and dependent claims. These claims derive from the original parent application, from claims previously pending in the current application, and from the specification. No new matter has been added. These claims are allowable for the same reasons a discussed for their respective independent claims as well as for the limitations contained therein.

Applicant has chosen not to present arguments specific to each of the features in the independent claims or to the features in the pending dependent claims, but reserves the right to present arguments directed thereto in future communications.

The Examiner is requested to reexamine the application, to allow the claims, and to pass the application on promptly to issue.

Please charge Deposit Account No. 50-2115 for any additional fees that may be required.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Karen Oster", written over a horizontal line.

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